

REMARKS

Claims 1-39 were pending in this application.

Claims 1-39 have been rejected.

Claims 1, 3, 24, 26, 34, 36, and 39 have been amended.

Claims 16 and 27 have been cancelled.

Claims 1-15, 17-26, and 28-39 remain pending in this application.

Reconsideration and full allowance of Claims 1-15, 17-26, and 28-39 are respectfully requested.

I. CITED REFERENCES

The Office Action notes that the Applicants' specification incorporates multiple documents by reference. The Office Action then requests that the Applicants provide copies of the references for review.

The Applicants respectfully note that the cited references were provided to the Patent Office in an Information Disclosure Statement. The Applicants have included additional copies of these references with this AMENDMENT AND RESPONSE for the convenience of the Examiner.

The Office Action also states that the references are "considered to be admitted prior art and a part of the specification." (*Office Action, Page 2, First paragraph*). The Applicants respectfully submit that no admission has been made that any of these references qualify as prior art against this patent application. While some or all of these references may qualify as prior art against this patent application, the Applicants have not admitted in any way that these references

qualify as prior art.

II. STATUS OF CLAIMS

The Office Action does not identify the status of Claims 28 and 37. In particular, the Office Action does not identify whether Claims 28 and 37 are allowable or are rejected. The Applicants respectfully request that the status of Claims 28 and 37 be provided in the next Official communication.

III. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1-21, 26, 27, 29-36, 38, and 39 under 35 U.S.C. § 102(b) as being anticipated by WO 00/39707 to Elenbaas et al. (“*Elenbaas*”) or U.S. Patent No. 5,835,667 to Wactlar et al. (“*Wactlar*”). The Applicants respectfully traverse these rejections.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. (*MPEP* § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. (*MPEP* § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)).

Elenbaas recites a video retrieval system that allows a user to quickly and easily select and receive stories of interest from a video stream. (*Abstract*). Among other things, a classifier 120 characterizes each segment 111 of a story. (*Page 7, Lines 20-21*). The primary means of

characterization is based on text segments 113, which may include annotations, transcripts, and/or summaries of the segments 111. (*Page 7, Lines 22-30*). Audio segments may also be used for categorization, such as by converting speech to text or detecting noises such as laughter, explosions, gunshots, and cheers. (*Page 8, Lines 5-8*). In addition, a visual characterizer 130 may be used to identify people appearing in a segment. (*Page 8, Lines 9-11*).

Claims 1, 26, 36, and 39 have been amended to recite extracting “faces, speech, and text” from content data, making a “first match of known faces to the extracted faces,” making a “second match of known voices to the extracted speech,” scanning the “extracted text to make a third match to known names,” and calculating a “probability of a particular person being present ... based on the first, second, and third matches.”

The Office Action asserts that pages 5-9 of *Elenbaas* anticipate these elements of Claims 1, 26, 36, and 39. (*Office Action, Page 4, Fifth paragraph*). However, the Office Action fails to explain how the cited portion of *Elenbaas* discloses matching “known voices” to “extracted speech” as recited in Claims 1, 26, 36, and 39. Also, the Office Action fails to explain how the cited portion of *Elenbaas* discloses calculating a “probability” of a particular person being present in content data “based on” three different matches. As a result, the Office Action fails to show that the cited portion of *Elenbaas* anticipates all elements recited in Claims 1, 26, 36, and 39.

For these reasons, the Office Action fails to establish that *Elenbaas* anticipates the Applicants’ invention as recited in Claims 1, 26, 36, and 39 (and their dependent claims).

Wactlar recites a system and method for creating a digital library from audio data and

video images. (*Abstract*). The audio data is time-stamped, and the video images are time-stamped in relation to the audio data. (*Abstract*). The audio data is indexed, and the video images are segmented and stored. (*Abstract*).

The Office Action asserts that Figure 6 and columns 11-13 and 17-18 anticipate extracting “faces, speech, and text” from content data, making a “first match of known faces to the extracted faces,” making a “second match of known voices to the extracted speech,” scanning the “extracted text to make a third match to known names,” and calculating a “probability of a particular person being present ... based on the first, second, and third matches” as recited in Claims 1, 26, 36, and 39.

Figure 6 of *Wactlar* illustrates a display that includes, among other things, images from scene changes and indications of when speakers change. Nothing in Figure 6 discloses matching known faces to extracted faces, matching known voices to extracted speech, matching extracted text to known names, and calculating a probability. Similarly, columns 11-13 and 17-18 of *Wactlar* contain no disclosure of matching known faces to extracted faces, matching known voices to extracted speech, matching extracted text to known names, and calculating a probability.

For these reasons, the Office Action fails to establish that *Wactlar* anticipates the Applicants’ invention as recited in Claims 1, 26, 36, and 39 (and their dependent claims).

Accordingly, the Applicants respectfully request withdrawal of the § 102 rejections and full allowance of Claims 1-21, 26, 27, 29-36, 38, and 39.

IV. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Elenbaas*. The Office Action rejects Claims 22-25 under 35 U.S.C. § 103(a) as being unpatentable over *Elenbaas* and/or *Wactlar* in view of Kobayashi et al., “Information Retrieval on the Web” (“*Kobayashi*”). The Applicants respectfully traverse these rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP* § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)). To establish a *prima facie* case of

obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (*MPEP* § 2142).

As described above in Section III, the Office Action has not established that *Elenbaas* or *Wactlar* anticipate all elements of Claim 1. Based on this, Claim 1 is patentable. As a result, Claims 20-25 are patentable due to their dependence from an allowable base claim.

Accordingly, the Applicants respectfully request withdrawal of the § 103 rejections and full allowance of Claims 20-25.

V. CONCLUSION

The Applicants respectfully assert that all pending claims in the application are in condition for allowance and respectfully request an early allowance of such claims.

SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.


The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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Date: _____

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